

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:10cv130
(CRIMINAL CASE NO. 1:08cr129)

THIS MATTER comes before the Court on Petitioner's Motion under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence, filed June 21, 2010 [Doc. 1], and his letter Motion to Amend his Motion to Vacate, filed August 23, 2010 [Doc. 2].

By his Motion to Vacate, Petitioner alleges that he was subjected to various instances of ineffective assistance of counsel, and that he was wrongfully determined to be a career offender. By his Motion to Amend, Petitioner seeks leave of Court to add a claim for resentencing under the recently enacted Fair Sentencing Act of 2010.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that leave to amend should be freely given “when justice so requires.” The

Government has not opposed the Petitioner's request to amend his Motion to Vacate. Accordingly, the Petitioner's Motion to Amend will be allowed.

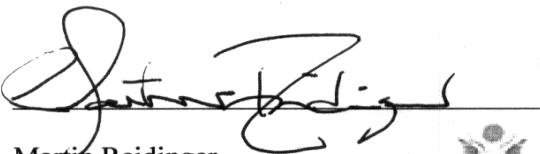
Furthermore, the Court has considered the Motion to Vacate along with the record of prior proceedings and determined that the United States Attorney should file an Answer to Petitioner's allegations. Consequently, the Government will be required to file a detailed response to all of the allegations contained in Petitioner's Motion to Vacate, as amended.

Accordingly, **IT IS, THEREFORE, ORDERED** that:

1. Petitioner's letter Motion to Amend [Doc. 2] is **ALLOWED**, and the Petitioner's Motion to Vacate is deemed amended to assert a claim for resentencing under the Fair Sentencing Act of 2010;
2. No later than forty (40) days from the entry of this Order, the United States Attorney shall file an Answer to Petitioner's amended Motion to Vacate detailing his allegations and responding to each; and
3. The Clerk shall send copies of this Order to the Petitioner and counsel for the Government.

Signed: September 15, 2010

IT IS SO ORDERED.



Martin Reidinger
United States District Judge

